

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ORDER

1. On December 20, 2012, the Court sentenced Defendant, Bruce E. Costa, Jr., to 240 months imprisonment. (D.I. 171)
 2. On December 29, 2012, Defendant filed a Motion to Alter Judgment Pursuant to Rule 35 or for Reconsideration of his Sentence. (*See* D.I. 165, 169, 174, 175, 187, 189)
 3. On January 18, 2013, Defendant filed a Notice of Appeal from his criminal conviction and sentence. (D.I. 172)
 4. Pursuant to Federal Rule of Criminal Procedure 35, a sentence may only be corrected “[w]ithin 14 days after sentencing” and when the sentence was the result of “arithmetical, technical, or other clear error.” Accordingly, this Court’s authority to act pursuant to Rule 35 expired 14 after sentencing. *See United States v. Higgs*, 504 F.3d 456, 464 (“[W]e conclude . . . the . . . time requirement of Rule 35(a) is jurisdictional.”). Hence, this Court presently lacks authority to “correct” Defendant’s sentence pursuant to Rule 35, even assuming such a correction would be warranted.

5. In addition, this Court is also without jurisdiction over this matter given the pendency of Defendant’s appeal. *See Venan v. Sweet*, 758 F.2d 117, 120 (3d Cir. 1985)

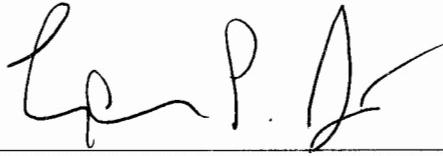
(“[T]imely filing of a notice of appeal is an event of jurisdictional significance, immediately conferring jurisdiction on a Court of Appeals and divesting a district court of its control over those aspects of the case involved in the appeal.”). Defendant acknowledges this Court’s lack of jurisdiction. (D.I. 189)

Accordingly, at Wilmington this **24th** day of **May, 2013**,

IT IS HEREBY ORDERED that:

1. Defendant’s Motion to Motion to Alter Judgment Pursuant to Rule 35 or for Reconsideration of his Sentence (D.I. 165) is **DISMISSED**.

2. The hearing scheduled for May 30, 2013 is **CANCELED**.



UNITED STATES DISTRICT JUDGE